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OF THE

PRINCIPAL MATTERS.

ACTION.

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1. In a possessory action, a plea in reconvention *involving title*, will be disregarded; but the right of the defendant in such cases, to attack the title of the plaintiff in a direct action, will be reserved. *Yarborough* vs. *Palmer*, 140

2. In a petitory action involving title to property, the pendency of or judgment, in another suit between the same parties about the same matter, in the nature of a possessory action, cannot be pleaded as an exception. *Palmer* vs. *Yarborough*, 167

3. The circumstance of the plaintiff, having proposed to take a less sum than that which he claims, to avoid a suit, and which was not accepted, does not preclude him from recovering the sum which he legally proves to be due to him, in an action for his whole claim.....*Frieby* vs. *Chretien et al.*, 214

4. It is an incontrovertible principle in law, that in a petitory action the plaintiff can only recover, on showing a valid title to the disputed premises in himself.....*Sprigg et al.* vs. *Hooper*, 350

5. Where the defendant is in possession, and the plaintiff shows no title, he cannot recover.....*ib.*

6. Actions receive their character from the nature of the relief sought; and an amendment, which alters the substance of the original demand, in this respect is inadmissible.....*Russell* vs. *Sprigg*, 421

7. In an action of lesion beyond moiety, the word *imposition* is technical, and does not amount to fraud, which authorizes the vendor to have the sale declared absolutely null and void. ..... *ib.*

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8. So, in an action of lesion *outre moitié*, in which it is alleged the vendee effected the sale and purchase by *imposition*, and an amended petition is offered, alleging fraud and false promises, it will be dissallowed, as changing the substance or nature of the original action..... *ib.*

9. In a possessory action against a squatter on public land, by another squatter, who had been dispossessed, the jury are authorised to take the lines of the quarter section, including his improvements as the limits, having no other rule to ascertain and determine the extent of possession.
Mayfield vs. *Morris*, 441

10. In a possessory action, where the petition does not allege *possession of a year*, which alone would give a right of possession, no recovery can be had..... .....*Sprigg et al.* vs. *Bynum et al.*, 464

11. Where the plaintiffs in a possessory action, found their claim to be restored to possession, on the ground of eviction by force, this fact is properly within the cognizance of the jury..... *ib.*

11. In a petitory action, the defendant in possession who declines title and indicates the name of his lessor, may be dismissed, and the person claiming title, must be made a party.....*Moore* vs. *Allain*, 491

12. The hypothecary action is a proceeding *in rem* against the mortgaged property, which it follows as a real right, into whosesoever hands it may be found. The third person claiming it, must either give up the property, or pay the debt for which it is bound..... *ib.*

13. The occupant, or tenant of mortgaged property, is not liable for costs, in an hypothecary action. It is a proceeding *in rem*, and the property must pay..... *ib.*

14. It is not proper ground for a direct action of nullity against a judgment in the court, by which it was rendered that no law is referred to, or reasons adduced in its favor; and that it is rendered against the wife, on contracts entered into conjointly with her husband during marriage. These errors can only be examined on appeal.
Chiasson et al. vs. *Duplantier*, 570

15. But if the wife be not authorized by her husband, or the judge, to appear in court, or stand in judgment, such judgment as may be rendered against her, may be annulled by direct action of nullity..... *ib.*

16. An allegation that the defendant sold to the plaintiff a house with warranty, and that a part of it *had fallen in ruins*, on account of the badness of the construction, sets forth a *cause of action* sufficient to authorise a recovery.....*De Armas* vs. *Gray et al.*, 575

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ACTS, NOTARIAL AND PRIVATE.

1. A notarial act which is not signed by the party to it, *in the presence* of the subscribing witnesses, making a renunciation of certain rights and mortgages, is not authentic, and will not bind the party thus signing it.
Pain vs. *Plicque & Le Beau*, 304

2. An instrument offered as a notarial or authentic act, which proves to be incomplete as such, cannot be received as a private act between the parties, when the original is not produced..... *ib.*

3. The notary who fails to receive and pass a public act, according to the provisions and formalities of law, is guilty of misconduct in office..... *ib.*

4. The sale of a tract of land by an act under private signature, which does not appear to be recorded, will be good between the parties, when it is shown that the vendee has been in possession under this title for nearly twenty years. Between the parties and their heirs such an act forms full proof.....*Wells' Heirs* vs. *Lamothe*, 410

5. A sheriff's deed, executed and duly recorded in the clerk's office, from which the execution issued, is full proof of what it contains in all the courts of the state, in the same manner as a notarial act.....*Perron* vs. *Maillan*, 520

6. But if a sheriff's deed imports a special mortgage, to secure the payment of the price stipulated in it, it must be recorded in the mortgage office of the parish where the property is situated, to have that effect against all persons..... *ib.*

ADMINISTRATOR.

1. The term of an administrator is not limited to one year, from the date of his appointment. In one class of cases, he shall continue to act until a partition be made among the heirs.....*Taylor et al.* vs. *Jeffries' Estate*, 435

2. Administrators stand on a different footing, as to the duration of their trust, from curators of vacant estates, although the law gives them the same powers, and subjects them to the same duties and responsibilies..... *ib.*

3. An injunction cannot be maintained, suspending the administrator in the exercise of the functions of his office, though he might well be restrained from committing and ruining the estate, by collusion with pretended creditors.....*Overton et al.* vs. *Overton's Administrator*, 472

4. The administrator may be removed, and called to account for his administration afterwards. The heirs can then have recourse upon his bond..... *ib.*

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5. It is necessary for all the heirs to join in an action, to compel the administrator to account, as he is bound to render but one account of his administration..... *ib.*

6. But any one of the heirs may maintain an action to remove the administrator for malversation in office..... *ib.*

AGENT—SEE PRINCIPAL AND AGENT.

AGREEMENT.

1. An oral agreement between the plaintiff and defendant, that as endorsers of a note, each will pay one half of the entire sum for which they are liable, is not annulled or suspended by a subsequent agreement to reduce the first one to writing..... *Carlin* vs. *Harding*, 223

2. The oral agreement was perfect, and binding on both parties, when the proposition to reduce it to writing was made; the latter agreement can only be considered as intending to give a less mutable form to the first one. *ib.*

AMENDMENT—SEE ACTION.

APPEAL.

1. The certificate of the clerk, which only "states that the record contains a true and correct copy of the documents on file, and transcript of all the proceedings had in the Court of Probates," but is silent as to the evidence of the case, is insufficient, and the appeal will be dismissed.
Webre vs. *Webre's Heirs*, 37

2. Service of citation of appeal on the attorney of the appellee, when the latter is in the state, is insufficient, and the appeal will be dismissed.
M'Micken vs. *Bank of Louisiana*, 135

3. It is not necessary that the citation of appeal be served within the year; although the citation has been served after it has elapsed, but in time for the term of the court, it will be sufficient.
Barremore's Syndic vs. *Bradford's Heirs*, 149

4. Parties to the appeal are alone competent to make a statement of facts, and not other persons who are not cited in the appeal.
Sojourner vs. *Charpontier*, 210

5. So, where the appellant agreed with the warrantor, that the original documents should be brought up and read in the Supreme Court, and such warrantor was not cited: *Held*, that the appeal must be dismissed on the motion of the appellee, the documents not being produced..... *ib.*

6. An agreement between the parties to the appeal, to bring up the original documents as part of the record, would be binding on both parties. *ib.*

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7. The execution of an appeal bond, in the sum required by the order granting the appeal, is a condition precedent, and is required before the right of appeal becomes absolute, or before the appellee is bound to take any steps to have his judgment affirmed. *Smith et al.* vs. *Vanhille et al.*, 252

8. If the appeal bond is defective for want of the amount or sum fixed by the judge, the appellee may have the appeal dismissed..... *ib.*

9. The appellant cannot deprive the appellee of his right to a dismissal of the appeal, by any act *posterior* to service of citation..... *ib.*

10. The appeal must be dismissed, when there is no appeal bond taken in favor of the appellee.....*Anderson* vs. *Cade et al.*, 269

11. Where the warrantors have assumed the defence of the action instituted against the defendant, and judgment is rendered in favor of the plaintiff against the defendant, and for the latter against the warrantor: *Held*, that the plaintiff must be made a party to the appeal, in order that the judgment between the defendant and warrantors may be revised on the appeal..... *ib.*

12. Service of the petition, as well as of citation of the appeal is required, or the appeal will be dismissed..... ..*Grappe* vs. *Robinson*, 398

13. Where judgment is rendered for or against the wife, in which she has a separate interest, even when she is sued as executrix, her husband must be joined, and cited in the appeal.....*Wells et ux.* vs. *Scott's Executrix*, 399

14. When the court fails for the term to which the appeal is taken, and the transcript is not filed until the first day of the following term, it will then be in time.....*Wells' Heirs* vs. *Lamothe*, 410

15. So, where the appeal bond is only signed by the surety, it will be sufficient to maintain the appeal..... *ib.*

16. The clerk of the District Court, is a competent person to become surety in an appeal bond, even when taken in his own court.

Russell vs. *Sprigg*, 421

17. Where an appeal is taken by a party not in the record, and his interest is denied, and does not appear by the original proceedings, the case will be remanded, to inquire into the interests of the appellants.

Taylor et al. vs. *Jeffries' Estate*, 435

18. Where an order of appeal is made on the back, or at the foot of the petition, its deficiencies, as to description, or setting forth the court, time and manner of taking the appeal, may be supplied by a reference to the petition.....*Friend* vs. *Graham's Administrator*, 438

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19. When an appeal is prayed for from the Probate Court, *according to law*, it will be considered as taken to the Supreme Court, without any further description..... *ib.*

20. Where the certificate of the clerk does not state that the record contains *all* the evidence on which the cause was tried, and there is no other means given to examine the case on its merits, the appeal will be dismissed,.....*Gibson* vs. *M'Crummin*, 463

21. The appeal must be made returnable to the next term, if there be time sufficient to cite in the appellee. If the transcript of the proceedings cannot be made out in time to be filed, on or before the return day, the appellant may obtain further time to bring up the record. on application to the court. *Hart* vs. *Fisk*, 481

22. The return day of the appeal cannot be postponed by the judge *a quo*, for the purpose of giving time to make out a transcript of the record..... *ib.*

23. A citation of appeal, without the signature of the clerk of the court, is insufficient, and the appeal will be dismissed.....*Smith's Heirs* vs. *Blunt*, 483

24. So, where the citation of appeal has not been returned by the sheriff, and does not accompany the record, the appeal will be dismissed. *Tompkins* vs. *Bradford*, 484

25. The service of citation must be made on a commercial firm, in appeal as in ordinary cases, by personal service on either of the partners, or by leaving it at their store or counting house, and delivering it to their clerk or agent.....*Huntstock* vs. *His Creditors*, 488

26. An interlocutory judgment, ordering a curator to account, may be relieved against, on appeal from such final judgment as may be rendered, and does not of itself work an irreparable injury. It cannot, therefore, be appealed from..... .....*Hodge's Heirs* vs. *Durnford's Curator*, 497

27. If the record has not been filed on the return day, the appellee may, on the third day thereafter, if it is not filed, obtain the clerk's certificate to that effect, and obtain execution of the judgment below; or he may bring up the record himself, and have the appeal dismissed. *Traverso et al.* vs. *Row et al.*, 500

28. But if the appellee wait until the transcript be actually filed, although it may not be brought up, until the lapse of three judicial days from the return day, he cannot avail himself of any advantage resulting from its notbeing filed in due time..... .... *ib.*

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29. A judgment of partition, cannot be amended or altered on appeal, except contradictorily with all the parties to the original suit..... *ib.*

30. If the appellant wishes to withdraw his appeal, he must do so on motion to the court *a quo*, before he has the appellee cited in..... *ib.*

31. An appeal will not be dismissed, because the transcript is not filed on the return day, if it be filed before the motion to dismiss.
Decoux's Heirs vs. *Plantevignes*, 503

32. The appellant has a delay of three judicial days after the return day, within which to file the transcript, or obtain prolongation of time..... *ib.*

33. If the record does not contain all the proceedings of the Supreme Court, had on a previous appeal when the case was remanded, the appeal need not be dismissed, as the proceedings can be read from the minutes of the court.....*Bell* vs. *William's Administrator*, 514

34. An appeal cannot be maintained from the refusal of the judge to order a re-sale of minors' property, when the appeal bond is only taken to the under-tutor, and when neither he nor any other parties are cited in the appeal.....*Hutchiss, Tutor &c.*, vs. *Dodd et al.*, 538

35. Damages for a frivolous appeal, will not be allowed, when from the circumtances of the case, it cannot be supposed the sole object in appealing was delay.....*De Armas* vs. *Gray et al.*, 575

36. Service of citation of appeal can only be made on the attorney of the appellee, when the latter *resides* out of the state. *Absence* from the state does not authorise it..... .....*Riker* vs. *His Creditors*, 580

ARBITRATOR.

1. Where a cause after issue joined, is by a consent rule of court *referred* to two persons named by the parties, with power to choose an umpire, they will be considered as *arbitrators*, whose decision is final in the case, and which is to be made the judgment of the court
Breaux vs. *Martin's Heirs*, 199

2. The award of arbitrators is not liable to be excepted to, for want of precision in stating the facts on which it is grounded, as in the case of reports of experts and auditors of accounts. The article 455 of the Code of Practice, does not apply to the awards of arbitrators..... *ib.*

ASSIGNMENT AND TRANSFER.

1. The assignment and transfer of an instrument of writing, containing a conditional promise by the maker of it to convey a tract of land, on being

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paid the difference between four hundred dollars, and the price for which it was purchased, is valid, without any price being expressed on the face of it.
Reguillo's Heirs vs. *Lorente*, 23

2. Such an instrumment is evidence of a sum of four hundred dollars having been received, coupled with a conditional obligation to convey a tract of land..... *ib.*

3. Where a debtor transfers a promissory note to his creditors for collection, the latter are held to account for it, at its full value at the time of the transfer; estimating the principal and interest accrued, according to the place where it is made payable. If any loss is sustained in computing or proving interest, the creditor must bear it
Rogers et al. vs. *Vanlandingham*, 143

4. An agreement made by a debtor, by notarial act, in which he makes an assignment of his property to certain individuals as trustees, for the benefit of such creditors as sign, does not constitute them syndics; nor does it confer power on them to maintain an action for the recovery of property alleged to belong to said debtor, but not mentioned in the act.
Barremore's Syndics vs. *Bradford's Heirs*, 149

5. A purchaser at public sale of a right or debt, alleged to be due by another, becomes the assignee of him who was the supposed creditor, and owner of the claim, and in whose favor it was supposed to exist. The buyer cannot, therefore, exercise the rights thus acquired in any other manner than the original party could.....*Kelso* vs. *Beaman*, 450

6. As assignee, a party cannot avail himself of any fraud or collusion between the assignor and the debtor, against whom he seeks to enforce his claim..... *ib.*

ATTACHMENT.

1. It is no ground of objection to issuing an attachment, that both plaintiff and defendant reside out of the state; for the oath may be taken by an agent of the plaintiff, and absence from the state of the defendant expressly authorizes an attachment.....*Tyson et al.* vs. *Lansing*, 444

2. Nor can it be objected to the issuing of an attachment before the debt is due, as it is expressly provided for under the act of 1826..... *ib.*

3. The plaintiff in attachment may give a new bond, and substitute a new surety, in order to make the first one a witness, when no liability *has* accrued under the first bond..... *ib.*

4. An attachment may issue, when both plaintiff and defendant reside out of the state, and even before the debt becomes due.
Lowery et al. vs *Lansing*, 448

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5. A new surety in an attachment bond may be substituted, and the first made a witness, when no liability has already accrued..... *ib.*

ATTORNEY.

1. The services of an attorney, who draws up the petition and schedule of a ceding debtor, create a claim on the estate surrendered, which is not to be placed on the tableau as a debt of the insolvent. These services enure to the benefit of those who have an interest in the estate surrendered.

Friend vs. *Graham's Administrator*, 438

2. So, the services of an attorney, in procuring the removal of an administrator, enures to the benefit of the succession; that is, the creditors and heirs. The claim of services should therefore be paid out of the funds of the succession, although the attorney was employed at the request of some of the heirs..... *ib.*

3. A procuration or mandate is gratuitous, unless there has been a contrary stipulation. This need not be express, it may be implied.

Decoux's Heirs vs. *Plantevignes*, 503

BAIL.

1. The forfeiture of a recognizance or bail bond for the non-appearance of the principal and his bail on the day fixed in the bond, does not fix the parties to it, and is not absolute. It is in the nature of an *estreat* at common law, extracted from the records of the Criminal Court, to serve as the foundation of proceedings against the accused and his bail or surety to *amerce them;* but to the rule taken, and motion for judgment on the bail bond, the parties may plead other matters and be discharged..... *State* vs. *Dunbar et al*, 99

2. Where the accused, in a criminal prosecution, appeared with his bail after the recognizance was forfeited, but before final judgment on the bail bond, and a *nolle prosequi* entered as to the charge against the accused: *Held*, that both principal and surety were exonerated from the penalty in the bail bond..... *ib.*

3. When the accused appears after forfeiture of his bail, but before judgment on the bond, it is the duty of the district attorney to either proceed with the trial, or pray the court to order him into custody..... *ib.*

BILLS AND NOTES.

1. The presumption that the holder of a note made payable to bearer or endorsed in blank, when made in negotiable form, is the rightful owner, is *primâ facie* evidence of title in such holder, which only yields to contrary proof..... *Cox* vs. *Bethany*, 150

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2. But the presumption of title in the holder of a note, ceases when he is one of two or more co-obligees, because they cannot all possess the note individually..... *ib.*

3. Notes or instruments made payable to two or more payees or obligees, held by one of them, he must be considered as holder for all, unless it be shown he has acquired by transfer the rights of his co-obligees..... *ib.*

4. A married woman is incapable of waiving, without the consent of her husband, demand and protest as endorser, even when he had endorsed the note before marriage.....*Marshall* vs. *Overbay et al.*, 161

5. When a note is payable at a particular place, a personal demand on the drawer cannot always be made, and is not required. It is sufficient, if the demand is made of any persons at the place designated.
Gale vs. *Kemper's Heirs*, 205

6. A notary is not required to make a demand of payment, protest or service of notice, in the presence of witnesses; they are only to attest his entry and record..... *ib.*

7. A notice of protest is properly directed to the principal and nearest post-office to the residence of the endorser, when there are more than one in the parish..... *ib.*

8. A letter of credit written by the defendant, introducing a person to the plaintiff, as concerned with him in the planting business, and going to the city, where the latter resides, to make purchases for the plantation with directions to draw on him, and requesting him (plaintiff) to pay his drafts, establishes an authority in such person, conferred by the defendant, to draw for an amount unlimited.....*Segond* vs. *Thomas*, 295

9. Where the acceptor of a draft, notifies the principal or guarrantor of the agent or drawer, of its acceptance, tenor and amount, by stating it at the foot of an account rendered on a settlement, before the draft is due, to which he makes no objection, and which is afterwards paid by the acceptor at maturity, he is bound to reimburse it, but without interest..... *ib.*

10. Commission is a fair compensation for the use of the name and credit of the acceptor, but interest is not allowable on advances to take up an acceptance, where there is no agreement to pay any..... *ib.*

11. Where a person, not a party or payee of a bill or note, endorses it, he is presumed to have done so as a surety and not as endorser, and his liability will be considered as such.....*Smith* vs. *Gorton*, 374

12. If a party, endorsing his name on a note or bill, supposed he was binding himself as endorser, and not as surety, it is an error of law, of which he cannot avail himself, when not led into it by the adverse party. *ib.*

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13. The party sought to be charged, may show that he acted as agent in drawing the bill of exchange sued on, and in this respect is to be considered in the same light as showing a want of consideration, and in either case he is not liable..... .....*Wolfe et al.* vs. *Jewett*, 383

14. A person may draw as agent upon his principal for a debt not personal to himself, but due by the principal to the payees, without expressing the agency on the face of the bill..... *ib.*

15. A bill or note must be presented for acceptance, at the place specified on its face, and duly protested for non-acceptance, in case no one appears or accepts it, and notice thereof given to the drawer..... *ib.*

16. If the drawee of a bill cannot be found at the place where the bill states him to reside, and it appears he never resided there, or has absconded, the bill is to be considered as dishonored..... *ib.*

17. Where the *maker* and owner of a note, which he gets endorsed by the payees, transfers it to a third person, it becomes an accommodation paper, in which the endorser is merely a surety.....*Leckie* vs. *Scott et al.*, 412

18. No recovery can be had of the endorser, if demand of payment be not made on the maker; or on his heirs or legal representatives if he be dead, unless the impossibility of making such demand is shown.
Landry vs. *Stansbury*, 434

19. Where the maker of the note is dead on the day it is due and payable, and an administrator is appointed, it is unnecessary to make a demand on him, in order to bind the endorser, because he is not authorized to pay any claim against the estate, until the expiration of a certain period of time..... .... *ib.*

20. Notice of protest, when the endorsment is made by a firm, to one of the partners, is sufficient.....*Magee et al.* vs. *Dunbar and Brother*, 546

21. Where a bill is paid *supra* protest, for the honor of the drawer, he can only recover of the drawee the costs of protest for non-acceptance.
City Bank of New-Orleans vs. *Girard Bank*, 562

22. Where an agreement contains a dissolving condition on notice given by one of the parties, and before the expiration of the notice, the other desiring to continue it, proposes some new modifications, which are accepted by the adverse party, two days after the notice to dissolve had expired: *Held*, that this was a waiver of his right of considering the agreement at an end, and that he was bound for bills drawn in the mean time, under the agreement..... *ib.*

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23. The obligation of the drawee to pay a *check*, and a bill of exchange, are the same. Both contain a request from the *drawer* to the *drawee*, to pay a sum of money to a third person, in whose favor the check or bill is drawn..... *ib.*

24. The acts of the legislature giving damages on protested bills, only relate to those due by drawers and endorsers, and is silent in regard to those which are claimed from drawees and acceptors..... *ib.*

25. But when damages are claimed by the drawer from the drawee who was bound to honor the draft, the latter must indemnify the former for the damages resulting from the dishonor, *i. e.*, whatever *he* has had to pay the holder..... *ib.*

BOND.

1. A twelve months' bond, is essentially a contract, to which the law attributes only the force of a judgment, so far as relates to its execution by summary process.....*Alexander* vs. *Evans et al.* 132

2. So, a twelve months' bond, taken in pursuance of the act of 1817, sections 14, 15, does not operate as a judicial mortgage on the property of the obligor, by being registered in the office of the recorder of mortgages. *ib.*

CITATION.

1. The seal and signature of the clerk of the court, from which it issued, are essential, and must be affixed to the citation, and all process issuing therefrom.....*Smith's Heirs* vs. *Bradford*, 483

2. Where the citation of appeal has not been returned by the sheriff, and does not accompany the record, the appeal will be dismissed.
Tompkins vs. *Bradford*, 484

3. When there is nothing to show the character of the mandate with which an attorney is clothed, it will *not* be presumed that he had authority to receive service of citation.....*Rowland* vs. *Pascal's Executor*, 598

4. If the defendant is a resident of the state, and is absent, service of citation is to be made by leaving it at his domicil. If he resides out of the state, a curator *ad hoc* should be appointed..... *ib.*

5. The service of citation of appeal is to be made in the same manner as is required by law, in courts of ordinary jurisdiction.
Huntstock vs. *His Creditors*, 488

6. So, the service on a commercial firm must be made on either of the partners in person, or by leaving the citation *at their store or counting house*, and delivering it to their clerk or agent..... *ib.*

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7. The Code of Practice, article 582, authorizes service of citation to be made on the attorney of the appellee, *solely* in cases where the latter *resides* out of the state.....*Riker* vs. *His Creditors*, 580

8. *Absence* from the state of the appellee, does not authorize service of citation of appeal on his attorney..... *ib.*

COMMISSION AND CHARGES.

1. A person employed in the settlement of a succession will be allowed to introduce evidence in support of a commission charged by him, to show that it is usually allowed in such cases.....*Decoux's Heirs* vs. *Plantevignes*, 503

2. The receipt of heirs for a balance, is evidence of an account rendered and a settlement made. It is evidence of the allowance of every charge made in the account, even the commissions retained..... *ib.*

3. The commission charged for the settlement of a succession, may be allowed in lieu of a compensation usually stipulated for, and paid for such service. The tutor may allow this commission on the property of his ward. *ib.*

4. If the heirs respectively received the sums due them from the person entrusted with the settlement of their anceestor's succession, on an account rendered, the balance retained by him will be presumed to be on account of his commissions, and as if they were actually paid to him..... *ib.*

5. A person acting either as executor or agent of a succession, by the advice and authority of a family meeting, in settling its affairs and paying over to the heirs their respective portions, is entitled to his commissions thereon.....*Decoux et al.* vs. *Ledoux*, 558

COMMUNITY OF ACQUESTS AND GAINS.

1. Property purchased during marriage, although it be conveyed to, and the title taken in the name of the wife, makes part of the community of acquests and gains.....*Davidson* vs. *Stuart et al*, 146

2. So, the wife cannot bind herself as co-obligor with her husband or surety, for the price of property purchased by her with her husband's consent, during the existence of the community, even when the title is made in her name..... *ib.*

3. Where the community was dissolved by the death of the wife, and no inventory or steps taken towards its liquidation, and it appears to have been indebted to a greater amount than that of the property exhibited, as having belonged to it at its dissolution: *Held*, that the only child by the first marriage will not be entitled to take any part of this community, by inheritance in right of his mother.

Turnbull, Tutor, &c. vs, *Towles' Executrix*, 254

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CONFLICT OF LAWS.

1. A judgment of the Orphan's Court, in Mississippi, rendered contradictorily with the guardian of a minor, decreeing a balance due to the former guardian, on a settlement of his accounts, is *primâ facie* evidence of this claim, in an attachment suit against the property of said minor in this state.....*Pool* vs. *Brooks et al.* 14

2. The judgment of another state, regularly obtained, when the defendant had been served with process, or had otherwise appeared, is conclusive evidence of the debt; but the defendant must have had due notice, or have actually appeared, to give validity to the judgment when sued on here.....*Patterson* vs. *Mayfield's Curator*, 220

3. A judgment obtained in another state, when it appears the party against whom it was rendered, was never cited or served with process, and did not otherwise appear, is not deemed valid in this.
Warren vs. *Hall's Executor*, 377

4. Even the record and decree of a suit in chancery of another state, are insufficient evidence of a debt in *this*, when there was no other service of process or notice to the defendant, than the publication in a newspaper, advertising him as a non-resident, and upon which the complainant's bill in chancery was taken as confessed..... *ib.*

CONTINUANCE.

1. The plaintiffs, on an affidavit of one of their attorneys, applied for a continuance, on the ground that he was advised the testimony of a certain witness was material, whose evidence could not be procured in time by reasonable diligence; that he was in *hopes* to sustain the charge of malversation in office against the defendant, by this witness and others, &c.: *Held*, that the affidavit was insufficient, as the attorney did not swear to his *belief* of the materiality of the evidence, nor that he *expects* to prove the facts alleged, or satisfy the court that the testimony of the absent witnesses will be produced at the next term, or by whom he is advised of these matters, and that he hopes, but does not swear, that he *expects*, or will be *able* to prove his allegations.....*Brander et al.* vs. *Flint, Curator, &c.* 391

2. The proceedings in a cause will be stopped, and a continuance granted, to allow the representatives of a deceased plaintiff to be made parties, even when the suggestion of his death is made by the defendant's counsel, after the evidence has been closed, and the argument commenced.
Babcock, Gardiner & Co. vs. *Williams et al.* 394

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CONTRACTS.

1. In Synallagmatic contracts, the refusal of either party to comply, liberates the other.....*Chase* vs. *Turner*, 19

2. Where a contract of sale of certain slaves, for a fixed price in money, is executed by a notarial act, and the next day the vendee executes a private act to the vendor, in which she proposes to give him certain property in France, for the price of said slaves, if, on inquiry, the vendor accepts it, and no acceptance is shown, but the property is proved to be of no value: *Held*, that these acts import two separate contracts, the first is perfect and executed, and the second of no effect.....*Poydras* vs. *Tusson*, 46

3. A debtor offering to a creditor certain property, which is of no value in payment of a contract, is not entitled to notice of his refusal to accept and receive it: it is equivalent to offering property to which she had no title; and she is in the situation of a drawer of a bill without funds in hands of the drawee, when no notice of protest is necessary..... *ib.*

4. In a *dation en paiement*, as well as in a sale, a fixed price is of the essence of the contract.....*Barremore's Syndic* vs. *Bradford's Heirs*, 149

5. The defendant subscribed five hundred dollars to a paper, in which he promised to pay this sum to any person who might be appointed to receive the same, on behalf of a college to be established in his town, on the express condition that it should be established at the next session of the legislature, and it was done accordingly: *Held*, that the defendant was bound by his engagement, to pay the sum subscribed by him.

Louisiana College vs. *Kellar*, 164

6. An obligation is not the less binding, although the consideration or cause, is not expressed in the instrument..... *ib.*

7. The expectation of deriving advantage from the establishment of a college or literary institution near one's residence, or the desire to promote education, and become the patron of letters and such like, when the object is lawful, form a valid consideration to render a contract for the payment of a sum of money binding..... *ib.*

8. In contracts of beneficence, the intention to confer a benefit, is sufficient consideration..... *ib.*

9. The article 1979 of the Louisiana Code, declaring contracts fraudulent as to creditors, which are made with the knowledge of the obligee, that the obligor was in failing and insolvent circumstances, and when they give the former an advantage over other creditors, merely establish a *presumption* against such contract; but it does not exclude other evidence

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of fraud, or control the principle that every contract may be the object of the revocatory action which is made in fraud of the rights of creditors.
Rhodes & Peters vs. *Beaman & Waters*, 363

10. Where the defendant received a deed in 1829, to five hundred acres of land in a Spanish grant, not located and patented, valued at five hundred dollars, for his professional services, in procuring from the general government a location, survey and patent to said grant of a league square: *Held*, that it appearing from the evidence the defendant was instrumental in procuring an advantageous location, though no patent has issued, he is not liable in an action of *lesion* beyond moiety on his contract.....*Green* vs. *Boyce*, 431

11. Where the defendant was capable of contracting, he cannot avail himself when sued, of the incapacity of the other contracting parties who were minors at the time, but seek to enforce the contract by their tutor..... ... *Arnous, Tutor, &c.* vs. *Lesassier*, 592

12. Where one of several heirs takes a contract from another, who had purchased the property from the succession inherited by all the heirs, he will only be bound to pay his co-heirs such sum as the original contracting party was bound for, after allowing full credit for all payments and offsets..... *ib.*

13. In a contract of sale of a plantation and slaves, for a stipulated sum on long credit, and an annual rent reserved, the parties will not be regarded as lessor and lessee, because of the rent, as the pretended lessee is himself the owner. The payment of an annual rent is but a stipulation for interest in disguise.... .*Bissell et ux.* vs. *Erwin's Heirs*, 524

CORPORATION.

1. A company or corporation can only act through its president or agents, and its acts or duties which it undertakes to perform, are those of the company itself.....*Marlatt* vs. *Levee Steam Cotton Press Company*, 583

2. Where a contract was made with the president or agent of an incorporated company to unload a boat, and she is taken possession of by the slaves of the company, and sunk soon afterwards, the latter will be liable for the injury or loss, unless they show it was the result of some event or accident not within their control.. ..... *ib.*

3. The proof of agency of an incorporated company may be made by parole, when the witness swears he contracted with the president of the company by name, when he is not asked the ground of his knowledge, that this person was the president or agent, and when there was no exception taken to this proof by parole, on the ground that the authority of this agent

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ought to have been proven by writing, as a company could not appoint an agent by parole..... *ib.*

COURT OF PROBATES.

1. The Court of Probates, is the proper tribunal before which to institute all suits for demand against a succession, in the course of administration.....*M'Neill's Heirs* vs. *Elkins' Executor et al.* 587

2. So, where the creditors of an insolvent set up a claim against the estate of a deceased syndic of the ceding debtor's estate, alleging that the property came into his hands, and remains unaccounted for, the Court of Probates is bound to take cognizance of the claim, and prevent the funds of the succession from being paid over, or taken from its jurisdiction, until the demand is litigated..... *ib.*

3. The Court of Probates is without jurisdiction, and incompetent to decide on an agreement between parties claiming a succession, which contains a promise to sell, and other conditions of a contract.
Overton et al. vs. *Overton*, 466

4. The question whether one of the parties who claims the estate, and is not an heir, had lost any rights under the agreement by a non-compliance with its conditions, is one of title, involving his right as a purchaser, which the Probate Court is clearly incompetent to decide. *ib.*

5. The Court of Probates may decree provisional possession of the estate to the presumptive heirs of an estate; but at the same time, if they claim as part of the estate, property in possession of any one, they must assert their right contradictorily with the possessor in the ordinary tribunal..... ..... *ib.*

6. When the court is without jurisdiction, as to the principal demand, it is without authority to issue a writ of sequestration, which is but an incident and a cautionary measure..... *ib*

7. Where a person died in one parish, and a curator was appointed in another, and his capacity to sue is denied: *Held*, that whether the Probate Court of A or B had authority to appoint a curator, depends on facts which may not be known to the District Court, and which it could not inquire into collaterally and incidentally.....*Stewart's Curator* vs. *Row*, 530

8. Where a will has been proved in the Probate Court, but not ordered by it to be executed, it cannot have any effect..... *ib.*

CURATOR.

1. Where judgment is demanded in the District Court, personally against the curator of the absent heirs who is *functus officiis*, and to

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compel him to pay the penalty of his bond, it may be discharged by complying with one of the principal conditions: that of rendering an account, and paying over any balance in the curator's hands.
Ingram's Heirs vs. *Stokes et al.*, 26

2. Where the curator of the estate of the absent husband is appointed administrator of the succession of the deceased wife, and in his latter capacity, provoked a meeting of creditors and a surrender and sale of the whole of the community property: *Held*, that he assumed to do acts inconsistent with his duties in either character, and thereby rendered himself personally liable to a creditor of the husband, who was thereby prevented from levying on this property, in satisfaction of his judgment.
Thornton vs. *Mansker*, 121

3. The curator *ad hoc*, cannot obtain an *exparte* judgment against the person, whose interest in a suit he was appointed to defend, for his fee, or compensation.....*Mourain* vs. *Beauvais*, 477

DECLARATION.

1. A declaration made by a party to a third person that *he* was under a moral obligation to pay the plaintiff for services rendered, and mentioned a sum that he intended to give her, is not binding when made out of her presence.....*Ditch* vs. *Wilkinson's Curator*, 29

DEMAND.

1. Where a sum of money is payable on a given day, at a particular place, *demand there* is a condition precedent, which the adverse party is bound to allege and prove.....*Morton* vs. *Pollard*, *f. w. c.*, 552

DEPOSITION.

1. The 433d article of the Code of Practice, requires, that after the depositions of witnesses are taken, the commissioner must cause them to be signed, and draw a *procès verbal* of the taking such depositions.
Lee's Heirs vs. *Burke*, 534

2. But the Code does not require that the *procès verbal* shall, under pain of nullity, immediately follow the examination of the witnesses. It is sufficient, if within a reasonable time after their examination on oath, and their depositions reduced to writing and signed, the commissioner makes his certificate of the manner in which he has executed the commission..... *ib.*

3. Any opinion, which the commissioner may append to his certificate or *procès verbal*, about the sufficiency of the proof, to establish the fact to which the witnesses have been examined, will be considered harmless, and of no effect..... *ib.*

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DISMISSAL.

1. A suit is improperly dismissed at the first term, because the plaintiff is unable to produce certain documents, orginally annexed to the petition, but which are shown by the affidavit of the attorney to have been lost, and that steps were taken to prove their contents.

Tucker vs. *Peebles' Curator*, 403

2. The absence of the documents annexed to the petition, affords no evidence of their having been taken away by the plaintiff..... *ib.*

3. Criminality is never presumed, and the loss of documents which have been filed, may have been caused by accident, or attributed to the want of care in the person intrusted with them, rather than one who had an interest in their preservation..... *ib.*

DIVORCE.

1. The fact that the husband and wife live unhappily together, and sometimes abused each other; and where the husband even went so far as to push the wife out of the door, but without any hurt, will not authorize the wife to obtain a judgment of separation of bed and board, with a view to a final divorce.....*Cooper* vs. *Cooper*, 249

2. In an action for a divorce by the husband, on the ground of adultery by the wife, the fact of adultery must be proved. It will not suffice that her conduct be extremely suspicious to entitle him to judgment..... *ib.*

3. Even where the husband knows of the adulterous conduct of his wife, but continues to live with her, and becomes reconciled to his own dishonor, and takes upon himself to punish or reform her without appealing to the law, it is questionable if he can afterwards be permitted to complain..... *ib.*

4. According to the divorce law of 1827, ascendants of one of the spouses are competent witnesses to prove cruel and unjustifiable treatment on the part of either of the spouses towards the other, in an action for separation from bed and board; but their competency does not extend to proof of the property which the wife claims as her own in such cases.

Taylor vs. *Phelps*, 114

DONATION.

1. Where an act, which is set up as a sale, be good as such or not, yet if it be clothed with all the formalities required by law, to give force and effect to donations *inter vivos*, it will be considered and held valid as a donation.....*Rhodes* vs. *Rhodes*, 85

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2. A donation *inter vivos* can comprehend only the present property of the donor; if it comprehends property to come, as regards *that* it will be null: *Held*, that where a donation was made of lands, of which the donor was in possession only under an *inchoate* or equitable title, which was afterwards confirmed to him, the donation was valid on the perfection of the title..... *ib.*

EVICTION.

1. Where the plaintiffs recovered three undivided fourths of a tract of land, and were required to pay the defendants the value of the improvements thereon; and if not paid within sixty days, execution to issue: *Held*, that the plaintiffs were not entitled to exercise the rights and actions of joint owners, as soon as the question of title to the larger portion of the undivided property was decided in their favor, and provoke a sale of the whole property, with an adjustment of the improvements and fruits, as incidental to the proceeding. *But it was held*, that in a petitory action, the defendants are entitled to be maintained in their possession of the whole, until the value of the useful improvements is paid by the evictors, in proportion as they have recovered.....*Fletcher's Heirs* vs. *Cavelier et al.* 116

2. Defendants who are evicted of part of their land, and entitled to remuneration for their improvements, are not bound to remain in a state of indivision with the evictors, and kept in suspense as to their ultimate rights, as well as their recourse in warranty, for an indefinite period of time. They are entitled to a fixed period, when adjustment and payment may be coerced..... *ib.*

3. The obligations of the warrantor, depend on the law in force at the time of sale. According to the provisions of the old Civil Code, 354, article 57, the seller is bound, on the eviction of his vendee, to pay the augmented value of the property, above the price of sale..... *ib.*

4. The original price, added to the rents and profits, does not necessarily constitute the measure by which the liability of the warrantor is to be tested..... *ib.*

5. The warrantor is not to be called on to reimburse, until the judgment of eviction has had its effect against the party evicted..... *ib.*

EVIDENCE.

1. A judgment of the Orphans' Court, in Mississippi, rendered contradictorily with the guardian of a minor, decreeing a balance due to the former guardian on a settlement of his account, is *primâ facie* evidence of the claim, in an attachment suit against the property of the minor in this state.....*Pool* vs. *Brooks et al.* 14

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2. Parole evidence is admissible to show the nature and extent of the possession of the estate by the executors, when there is no express seizin given by the will.....*Anderson's Heirs* vs. *Anderson's Executors*, 29

3. The receipt of the receiver of public monies for government lands, is sufficient to show that the title is out of the government.
Newport vs. *Cooper et al.* 155

4. The proceedings of the board of land commissioners adjudicating on donation claims to land, where they reverse and annul a certificate previously granted by the board, recognizing the donee's claim, will not be received as evidence against such certificate..... .. *ib.*

5. Parole evidence is inadmissible to show that an act of sale was different from what it purports on its face, so far as relates to title, although it might be legal and proper in a claim against the community, to show that the *price* of the article was paid out of the separate funds of the husband.
Brown and Wife vs. *Cobb et al.* 172

6. Where a judgment was obtained in another state, and offered as evidence of the debt here, and it appears in the record that an appearance by an attorney was entered and issue taken on a plea of payment for the defendant, the authority of the attorney will be presumed, and the record received as full evidence of the demand.....*Tipton* vs. *Mayfield's Curator*, 169 189

7. So, where the record of a suit and judgment of another state, is certified in due form of law according to the act of congress, it will be received in evidence *here*, and the same faith and credit be given to it, as it would be entitled to in *that* state..... *ib.*

8. Parole evidence is admissible to show the amount of property brought into marriage by the wife, even when the witnesses speak of written evidence existing in relation to it, if they derived their knowledge of this fact from hearsay.....*Fastin* vs. *Eastin's Heirs*, 194

9. A latent ambiguity may be explained by parole evidence. So, the certificate of a notary is not an authentic act, and may be explained by parole evidence.....*Gale* vs. *Kemper's Heirs*, 205

10. Propositions or admissions for the purpose of buying peace or made to avoid litigation, are not admissible in evidence in courts of common law; and the adverse party will not be allowed to avail himself of them in the courts of justice in the state of Louisiana.
Frieby vs. *Chretien et al.* 214

11. In a petitory action to recover property purchased at sheriff's sale, the sheriff's deed registered in the clerk's office, is of such authenticity as

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authorizes it to be read in evidence, without further proof of its execution or publicity.....*Perron* vs. *Maillan*, 520

EXCEPTION.

1. A dilatory exception, denying the identy of the plaintiffs as a firm, may be pleaded after a judgment by default, on filing an answer to the merits.
Magee et al. vs. *Dunbar and Brother*, 546

2. Although an issue is tacitly joined by a judgment by default, yet, when it is set aside, by filing an answer, it is as if it had never existed..... *ib.*

3. In denying that the names of the plaintiffs do, in fact, compose the firm in whose name they sue, and not averring that other persons compose it, is insufficient. An exception of this kind ought at least to show, that admitting the facts alleged, a judgment in the case would not be a bar to a second action..... *ib.*

EXECUTOR.

1. Where a will does not give the seizin of an estate to the testamentary executor, in the legal or technical sense of the word, yet, when the heirs are absent from the state, and the executors took possession of the whole estate, as they clearly had a right to do, they are entitled to full commisions on the amount of the inventory, after deducting bad debts, &c.
Anderson's Heirs vs. *Anderson's Executors*, 29

2. In the absence of the heirs, the testamentary executors, who are put in possession of all the property, have it under their charge and responsibility, even when there is no express or legal seizin given, and are entitled to full commissions..... *ib.*

3. Parole evidence is admissible to show the nature and extent of the possession of the estate by the executors, when there is no express seizin given by the will..... *ib.*

4. After the executors have surrendered the estate to the heirs, legatees who are unpaid have a direct action against the heirs for the amount of their legacies, and must resort to it for redress..... *ib.*

HUSBAND AND WIFE.

1. The wife may at any time demand the administration of her paraphernal property, and the restitution of the objects forming that property.
Hawes vs. *Bryan*, 136

2. A receipt of the wife under private signature, that she has received her paraphernal effects from her husband, given when a suit for a divorce

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was pending, will not operate against third persons or creditors, when there is no proof of its execution; being under private signature it is without date as to third persons..... *ib.*

3. Property purchased during the marriage, although it be conveyed to the wife alone, makes part of the community of acquests and gains.
Davidson vs. *Stuart et al.* 146

4. The wife cannot bind herself as co-obligor, conjointly with her husband, or as surety for the price of the property purchased by her with her husband's consent, during the existence of the community, although the title and conveyance are made in her name..... *ib.*

5. A married woman is incapable of contracting a new obligation in favor of a creditor without the consent of her husband, by waiving notice of demand and protest as endorser, even when she endorsed the note before marriage.....*Marshall* vs. *Overbay et al.* 161

6. Where it is shown that a slave was purchased with the funds of the wife, and the title taken in the name of the husband, the slave will be community property, but the *price* will become a legal charge against the community, in favor of the wife.....*Brown and Wife* vs. *Cobb et al.* 172

7. Where the deed of sale of certain slaves to the husband during marriage, purports to be a simple absolute sale on its face, the slaves will be considered as community property..... *ib.*

8. Where the husband gives a receipt for money received from the estate of his wife's ancestor, the funds will be considered as part of the wife's inheritance, and received on her account, for which he will be liable to her heirs.....*Turnbull, Tutor, &c.* vs. *Towles' Executrix*, 254

9. But where the husband gives a receipt for a tract of land and slaves received from the estate of the wife's ancestor, at specified sums, it will not give him any legal title to them, and his succession will not be responsible for these articles, or the price at which they were estimated in the receipt to the heirs of the wife..... *ib.*

10. The wife can avail herself of her legal mortgage on the property of her husband, situated in a parish where no record of it was ever made.
Pain vs. *Perret*, 300

11. The rights of the wife relating to her dotal and paraphernal property, stand upon the same footing, as regards recording the evidence of them. Her legal mortgage attaches in both cases without being recorded..... *ib.*

12. If the wife be not authorized by her husband or the judge to appear in court, any judgment rendered against her may be annulled by direct action of nullity.....*Chiasson et al.* vs. *Duplantier*, 570

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13. Where the husband and wife are co-plaintiffs, or co-defendants, the husband's authorization of the wife to appear in court, results from their joining or being joined in the same suit, when he has no other interest than to assist her in asserting her rights..... *ib.*

14. But where the husband and wife are sued jointly, and she is separated in property, the husband has no right to appear and file an answer for the wife, as attorney, *without her consent*..... *ib.*

INJUNCTION.

1. Where a motion to disolve an injunction is overruled before a trial on the merits, the judgment sustaining the injunction is only interlocutory and does not release the surety. It may be dissolved on the final trial, as having been wrongfully obtained, and the surety condemned to pay damages.

M'Millen vs. *Gibson et al.* 517

2. But a surety in injunction will not be decreed to pay damages on its dissolution, for an instalment of the debt which becomes due *after* the injunction is granted..... *ib.*

3. The act of 1831, giving damages on the dissolution of injunctions, is considered to be one of great severity, which will be strictly construed by the court..... *ib.*

INSOLVENCY.

1. The act of 1826, authorizing the surrender of insolvent estates, requires, that in cases where no person would assume to act as administrator under a regular appointment, that the creditors should be convoked to appoint syndics, by whom the succession should be administered, as in cases of an ordinary *cessio bonorum*.....*Thornton* vs. *Mansker*, 121

2. In proceedings in cases of insolvent estates, service of notice on the attorney of the absent creditors is insufficient, as relates to creditors residing in the state. They are not absent creditors..... *ib.*

3. An agreement made by a debtor with part of his creditors, by notarial act, in which he makes an assignment of his property to certain individuals or trustees, for the benefit of such creditors as sign the agreement, does not constitute these persons as syndics, nor does it confer power on them to maintain an action for the recovery of property alleged to belong to said debtor, but not mentioned in the act of assignment.

Barremore's Syndic vs. *Bradford's Heirs*, 149

4. An insolvent debtor after *cessio bonorum*, is incapable of standing in judgment, even in the Supreme Court, as appellant in a suit in which he is made defendant.....*Knight* vs. *Callender & Deblois*, 226

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5. Where one partner makes a *cessio bonorum* for himself individually, and for the *firm*, the other partner retaining his private capacity, may be sued in attachment for a debt of the firm, on his leaving the state..... *ib.*

6. Debts of a succession, like those of the estate of a ceding debtor, are of a higher dignity, and are to be paid before those of the deceased, or of the insolvent.....*Friend* vs. *Graham's Administrator*, 438

7. The privileged debts and expenses of an insolvent's estate must be paid from the proceeds of the immovables, according to the price at which they have beed sold.....*Janin* vs. *His Creditors*, 554

8. It is the immovables, and not the mortgage creditors which owe, and must contribute to the payment of the privileged debts and expenses, whether the mortgages existing on such property be special or general..... *ib.*

INSURANCE.

1. The expenses of the crew of a vessel for their wages and provisions, during her detention at an intermediate port, to refit or repair injuries sustained on the voyage, from the time of her putting away for the port, and every other expense necessarily incurred during the detention, for the benefit of all concerned, *are subjects* of general average.

Hanse & Hepp vs. *New-Orleans Marine and Fire Insurance Co.* 1

2. In an action against the insurers, in which the assured claim the whole amount insured, or such proportion of the average loss as they have sustained, they may prove and recover a general average..... *ib.*

3. The insured may sue the underwriters, directly, without the amount being settled by the parties, subject to the constribution as on a general average, especially when there is nothing else to contribute, in settling the average, but property, for which the insurers are already liable..... *ib.*

4. Where a steamboat is insured for a month, and sustains an injury under this policy, in a distant place, for which the insurers are liable, and a second policy is taken out at the end of the month for another, making insurance against all risks, *on condition that the damages sustained under the first be repaired*, &c., and while repairing she sunk: *Held*, that the underwriters are liable, and that this was not a condition precedent, postponing the risk until the repairs were completed.

Hyde et al. vs. *Mississippi Marine and Fire Insurance Company.* 543

INTEREST.

1. Commission is a fair compensation for the use of the name of the acceptor, but interest is not allowable on advances to take up an acceptance, when there is no agreement to pay any.....*Segond* vs. *Thomas*. 295

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INTERROGATORIES AND ANSWERS.

1. Where a defendant is interrogated, on oath, to state what he gave for the purchase of a certain stock of goods, how much he paid in cash, and to whom, and to state all about it; he cannot avail himself of the plea of newly discovered evidence to obtain a new trial, in order to prove payment, when he might have proved it in his answers to the interrogatories.

Rhodes & Peters vs. *Beaman & Waters*, 363

2. Where the plaintiff is interrogated to disclose the truth, respecting the demand sued on, and he evades answering, on a technical objection, it creates a violent presumption that such disclosures would have destroyed his claim.....*Leckie* vs. *Scott et al.* 412

3. Any person within the verge of the court, may be called on to testify and disclose the truth; and if he is called as a witness, or as a party, to answer interrogatories, he cannot urge or excuse himself that he was not summoned, or had no notice to answer on that particular day..... *ib.*

4. So, where the plaintiff is notified to answer interrogatories in open court, and no day is fixed, but he happens to be present in court at the trial, and refuses to answer, his presence will be considered as a waiver of notice to appear on a *particular day*, and he is, consequently, bound to answer, or on refusal and neglect, the interrogatories will be taken for confessed..... *ib.*

5. If the interrogatories annexed to the petition are not answered, and no cause shown, they will be taken for confessed on the trial.

Magee et al. vs. *Dunbar & Brother*, 546

INTERVENTION.

1. An Intervention is, according to the Code of Practice, a separate demand, and consequently, the trial between the original parties can be properly gone into without it, or waiting for it....*M'Millen* vs. *Gibson et al.* 517

JUDGMENT.

1. The judgment of the inferior court will not be disturbed, when the case turns solely on matters of fact, and is supported by the evidence.

Saul vs. *Magee*, 39

2. The reasons given for a judgment, that "the law and evidence are in favor of the plaintiff," are sufficient to make the judgment valid and constitutional. No particular law is required to be cited.....*Allen* vs. *Peytavin*, 40

3. The defendant cannot complain, that the judgment does not confirm to the prayer of the petition, when it is given for a sum less than that asked for. Such a complaint would come with a better grace from the plaintiff..... *ib.*

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4. The judgment of the court, adjusting accounts between the parties, which only relates to facts, and is supported by evidence, will not be disturbed.....*Gibbons* vs. *Wright et al.* 112

5. In a cause tried by the court alone, it is not to be presumed the judge *a quo* was influenced by improper evidence. So, where, after rejecting the illegal evidence, there is still enough to sustain the judgment, it will be affirmed.....*Taylor* vs. *Phelps*, 114

6. Where a judgment has been obtained in another state, and offered as evidence of the debt in this, and it appears that an attorney appeared and entered a plea of payment upon which issue was taken, the authority of the attorney will be presumed, and judgment received as evidence of the debt here.....*Tipton* vs. *Mayfield's Curator*, 189

7. Where the fairness of a judgment of separation of property by the wife against her husband, is put at issue, and the jury find in support of it; their finding will not be disregarded, even where the evidence appears doubtful, in relation to the amount for which it was obtained.
Fastin vs. *Eastin's Heirs*, 194

8. A judgment of another state rendered under a statute, requiring no notice to be given to the defendant, will not be enforced in this state, whatever may be its effect in that state.....*Patterson* vs. *Mayfield's Curator*, 220

9. The judgment of another state regularly obtained, when the defendant had been served with process, or had otherwise appeared, is conclusive evidence of the debt; but the defendant must have had due notice, or have actually appeared, to give validity to the judgment when sued on here..... *ib.*

10. Judgment taken by default, even when the party has been cited, cannot be proceeded on by the *via executiva*..... ..... *ib.*

11. Where there is no judgment in a former case, between the same parties, about the contested premises, the plea of *res judicata* cannot be sustained..... .....*Sprigg et al.* vs. *Hooper*, 350

12. Whenever any *change* is made in a judgmeut of the Supreme Court, before it becomes final, even in correcting its phraseology, either of the parties have three judicial days, within which to present a petition for a re-hearing.....*Chew et al.* vs. *Flint*, 372

13. After a change or correction is made in a judgment of the Supreme Court, it does not become final, until the lapse of three judicial days after such correction is made..... ..... *ib.*

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14. A judgment obtained in another state, when it appears the defendant was never cited or served with process, and did not otherwise appear, is not deemed valid in this.....*Warren* vs. *Hall's Executor*, 377

15. Even when the record and decree recites, that the parties appeared by their attornies in a suit in chancery in another state, the record and decree are insufficient evidence of the demand in this, when it is shown there were other parties; and where the decree explessly states, the defendant (who is a non-resident) had wholly failed to enter his appearance, agreeably to law and the rules of court, notwithstanding publication of notice to do so, and the complainant's bills were therefore taken as confessed.....*Warren* vs. *Hall's Executor*, 377

16. This court is not prepared to say, that a judgment rendered against the heirs for a debt of the ancestor, is conclusive upon the executor..... *ib.*

17. A judgment, for even a part of the sum claimed by the plaintiff, rejects the defendant's claim, when it is pleaded in compensation and reconvention.....*Delinonico et al.* vs. *Trizzinie*, 401

18. If on examination of the evidence, it appears no injustice has been done, judgment will be affirmed with costs..... *ib.*

19. Where a case turns on a mere question of fact, and the evidence does not support the defence, judgment for the plaintiff will be affirmed.
Thomas vs. *Crawford*, 406

20. On a question of fact, whether the plaintiffs sold the articles charged to the defendants or to the undertaker, when the evidence fails to show the court below erred, its judgment will not be disturbed.
Kain & Stroud vs. *Commercial Bank*, 542

JURISDICTION.

1. The District Court has jurisdiction in a suit brought to recover the penalty in a curator's bond, in an action on the bond, against the principal and surety.....*Ingram's Heirs* vs. *Stokes et al.* 26

2. Where the plaintiff was prevented, by the excess of his claim, from going before a court of limited jurisdiction to contest and litigate his rank and privilege with another creditor, who was seeking a judgment, with a privilege, against the common debtor, in said court: *Held*, that he can compel his adversary to come into a higher court to litigate their claims.
Terry vs. *Terry et al.* 68

3. The District Court has jurisdiction in an action of partition, when it embraces two objects: first, to ascertain and determine the rights of the property in question; and second, to decree a partition between the parties.....*Rhodes* vs. *Rhodes*, 85

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4. The District Court has jurisdiction of a suit on administrator's or curator's bond, against the surety as well as the principal.

Raby vs. *Barton*, 141

5. Courts of Probate have exclusive jurisdiction of all claims for money against successions administered by an executor.

Ballew vs. *Andrus' Executor*. 216

6. Where the succession of the deceased husband is in the hands of the widow and heirs, some of the latter being minors, and it appeared an administrator had been appointed to the succession, but had rendered no account: *Held*, that the District Court was without jurisdiction in a suit against the widow and heirs, for a debt of the husband, except so far as her half of the community is concerned, or she may have intermeddled.

Cox et al. vs. *Hunter's Heirs*, 425

LANDS.

1. The proceedings of the board of land commissioners, adjudicating on donation claims, where they annul a certificate previously granted by the board, recognizing the donee's claim, will not be received as evidence against such certificate.....*Newport* vs. *Cooper et al.* 155

2. The court will presume, that a certificate given by the board of land commissioners, in relation to a claim to government land, was issued in pursuance of the provisions of law, and entitles the holder to a patent, when its conditions are complied with..... *ib.*

3. The Register and Receiver, when acting as land commissioners for the adjustment of claims to public lands, have full judicial authority to act, in cases of conflicting locations under different certificates; but are not authorized to revoke or annul a certificate of a claim already granted..... *ib.*

LANDLORD AND TENANT.

1. Where the lessee refuses to comply with the terms of the lease, by withholding the rent, as it becomes due, the lessor may have judgment rescinding the lease.....*Chase* vs. *Turner*, 19

2. In an action for the rescission of a lease, the judgment cannot allow any delay in its dissolution..... *ib.*

3. Where a lessee is sued for rent, and has been in the undisturbed possession of the premises, under a lease, he cannot contest the lessor's title.

Tippit vs. *Jett*, 359

4. So, a lessee cannot avail himself of the purchase of the leased premises from other claimants. He entered as the lessor's tenant, and his

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possession is that of the lessor, which he cannot change as to any part of the premises, by the purchase of adverse titles..... *ib.*

LAW.

1. The Spanish law was abrogated in Louisiana by the twenty-fifth section of the repealing act of 1823.
Handy, Under Tutor, &c. vs. *Parkison, et al.* 92

LESION.—SEE ACTIONS.

LESSOR AND LESSEE.—SEE LANDLORD AND TENANT.

MINORS.

1. Where a minor resides with his guardian out of the state, but has property within it, he may be sued by attachment, with the appointment of a curator *ad hoc* to defend, in the District Court, without the appointment of a tutor here..... .....*Pool* vs. *Brooks et al.* 14

2. Where minors, with their tutor, had left the state, but inherited property in it: *Held*, that the District Court had no jurisdiction of an action by attachment against the inheritance of the minor, for a debt of his mother's succession, even when a curator *ad hoc* was appointed to defend..... ..... *ib.*

3. But if a minor resides with his guardian or tutor in this state, he is suable in the District Court, if in possession of his property after partition for a debt due by himself and not by a succession..... ..... *ib.*

4. A judgment of the Orphan's Court, in Mississippi, rendered contradictorily with the guardian of a minor, decreeing a balance due to the former guardian on a settlement of his accounts, is *primâ facie* evidence of the claim, in an attachment suit against the property of the minor in this state..... *ib.*

5. Minors cannot claim a privilege on the property of their tutors, on account of the tutorship which effects personal as well as real property. They have only a legal mortgage to take effect from the date of the tutorship.....*Simpson* vs. *His Creditors*, 170

6. The presence of the under tutor, is indispensable at a family meeting, provoked to deliberate on the expediency of a sale of minor's property, or of the separate property of the deceased partner of the community, in which minors are interested.....*Stafford et ux.* vs. *Villain et al.* 319

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7. Where a tutor renders an account of his tutorship, even contradictorily with the under tutor, the Court of Probates is not authorized to homologate it by a decree making it conclusive on the minor, and to discharge the former from responsibility. The court can in no case relieve and discharge a tutor, while the law makes him responsible to his pupil..... *ib.*

MORTGAGE.

1. If the legal mortgage of the wife, attach to property before the sale by her husband, the court will give effect to it, against the property in the hands of third persons, or of his vendee.....*Fastin* vs. *Eastin's Heirs*, 194

2. Where A, in consequence of several persons endorsing his notes in bank, sells, and conveys, and delivers, by an authentic act, several slaves to them, to be holden until they shall be fully satisfied for their endorsements; that A shall have the power of redeeming said slaves on paying said notes, as they fall due: *Held*, that this is a mortgage for the security of the endorsers, and not a sale which vests the property with the right of alienation .....*Hutchings* vs. *Field et al.* 237

3. Where there is no price stipulated, and the words of the act or instrument of conveyance are, that the persons to whom it is made, shall hold the property until their endorsments are satisfied, it repels the idea of a contract of sale..... *ib.*

4. Such a conveyance is not a sale with the power of redemption. A right to refund the price and take back the property, necessarily supposes a *price* has been stipulated. There was no determinate price, and the party was not divested of title..... *ib.*

5. A mortgage is valid, even if the possession of the property effected is given to the mortgagee. It is not of the essence, though of the nature of the contract of mortgage, that the mortgagor should remain in possession..... *ib.*

6. The wife can avail herself of her legal mortgage on property of her husband, situated in a parish where no record of it was ever made. *Pain* vs. *Perret*, 300

7. The rights of the wife, relating to her dotal and *paraphernal* property, stand upon the same footing as regards recording the evidence of them. Her legal mortgage attaches in both cases, without being recorded. *ib.*

8. The person in the possession or occupancy of mortgaged property, cannot get himself discharged from an hypothecary, on indicating the name of his lessor. He may notify the latter to appear, and defend the property.....*Moore* vs. *Allain*, 490

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NEW TRIAL.

1. Where the Supreme Court, on examining and weighing the evidence on which the verdict is founded, is unable to agree with the jury, and justice requires it, the case will be remanded for a new trial *de novo*.

Passebon vs. *His Creditors*, 36

2. A new trial should not be granted on an affidavit of newly discovered evidence since the first trial, when the facts disclosed relate to matters which have not been pleaded.....*Cox* vs. *Bethany*, 152

3. New trials may be granted *ex officio*, in the sound discretion of the court.....*Gale* vs. *Kemper's Heirs*, 205

4. When from the circumstances of the case, justice requires it, the cause will be remanded for a new trial.....*Hutchings* vs. *Johnson's Heirs*, 245

5. A defendant cannot obtain a new trial on the ground of newly discovered evidence, when all the facts which are expected to be proved on the second trial, must have been within the knowledge of the parties on the first trial.....*Rhodes & Peters* vs. *Beaman & Waters*, 363

6. So, a new trial will not be granted to the defendant, on the ground that he could prove a particular transaction or contract by witnesses, which would make it appear different from the written contract itself. *ib.*

7. Where a party is interrogated on oath, to state what he gave for the purchase of a certain stock of goods, and explain the whole transaction, he cannot avail himself of the plea of newly discovered evidence, to obtain a new trial, with a view to prove payment on the second trial, as he might have proved it in his answers to the interrogatories..... *ib.*

8. Where the justice of the case is strongly in favor of the plaintiff, but owing to a defect in the pleadings, there is a verdict against him, the court might, in the exercise of its discretion, grant a new trial, to enable him to correct the errors of his attorney, by amending the petition.

Nichols vs. *Alsop*, 407

9. The Supreme Court will remand a case for a new trial, when this can be done with propriety, and is required, in order that the ends of justice be attained..... *ib.*

10. If from any cause, the court should be of opinion that the jury were misled as to the effect of a document, which is part of the evidence, the case will be remanded for a new trial.....*Stewart's Curator* vs. *Row*, 530

11. When there is no question of fact, and the sole question being the construction of an agreement or written instrument, of which the court

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is the legitimate judge, although the verdict be set aside, the case will not be remanded for a new trial....*City Bank of New-Orleans* vs. *Girard Bank*, 562

NON-SUIT.

1. On a motion to set aside a non-suit, by a transferee of the claim of one of the plaintiffs, and it is objected to on the appeal, that he was no party, and had no interest, the case will not be remanded, to inquire into his interest, when the motion was received and acted on in the court below, without the objection being urged....*Rowley's Heirs* vs. *Cheney et al.* 428

2. In a suit against executors and tutors to account, when the latter file a partial account, and pray for time to render a final one, and objections are made to the one rendered : *Held*, that the Probate Court improperly non-suited the plaintiffs on the ground of absence of counsel. The court might have overruled their objections to the account, but could not turn them out without a final action on their claim..... *ib.*

NULLITY.

1. The nullity, resulting from the want of a rendition of an account, previous to the release, or extra-judicial settlement between the tutor and his ward, is relative, and the act must have its effect, until annulled by a direct action, at least so far as third persons are concerned.

Collins vs. *Collins' Administrator*, 264

2. In a direct action of nullity, to set aside a settlement between the tutor and his ward, and for restitution, the latter can only be relieved by placing the party in the same situation he was before the contract..... *ib.*

3. The pupil is restricted in his direct action of nullity against his tutor, to four years after his arrival at the age of majority..... *ib.*

(SEE ACTION.)

OBLIGATIONS.

1. Obligations arising from a sheriff's bond, as relates to the sureties, are obligations *ex contractu* and not *ex delicto*, even when the bond is given to cover damages resulting from *torts* or omissions of duty of the principal therein.....*Ballew* vs. *Andrus' Executor*, 216

2. Conventional obligations may be superadded to those resulting from *torts* or *quasi* offences, and the party complaining may resort to his remedy on either..... *ib.*

OWNERS OF VESSELS AND STEAM-BOATS.

1. The owners of a steam-boat are liable for the injury done or loss sustained, through the negligence and misconduct of their masters and commanders.....*Brand* vs. *Tourné & Beckwith et al.* 130

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2. So, they are liable for losses occasioned by collisions and injuries done by them to other vessels, which might have been avoided by due diligence and care.....*Eber* vs. *Tourné & Beckwith et al.* 131

3. Where a steam-boat was wooding, and the slaves of a neighbor came on board, without its being shown that they were actually employed by the master or owner of the boat, and one of them was killed accidentally by the fly-wheel: *Held*, that the owners of the steam-boat were not liable for the value of the slave thus lost.....*Rice* vs. *Cade et al.* 288

4. Where the owner of slaves permits them to tow vessels or work for themselves at times, the persons or owners of vessels will not be liable, in case one is accidentally lost in such employment..... *ib.*

5. The owners of a tow-boat will not be liable for injury sustained by the collision of two vessels she was about taking in tow, when the fault was in the manner the crew of one of the ships, which was dropping down the stream, executed the manœuvre, and when the tow-boat was incapable of preventing the accident.....*Barragon* vs. *Louisiana Steam Tow-Boat Co.* 581

PARTITION.

1. The tutrix cannot maintain an action of partition for the share of her pupil without the advice of a family meeting, together with the authorization of the judge.....*Rachal et al.* vs. *Rachal's Heirs*, 454

2. Co-heirs have an undivided interest in the property of the ancestor, which indivision, the action of partition destroys, and vests in each his share, and extinguishes his right to the rest..... *ib.*

3. But where the property of an estate is converted into cash, there is no necessity for a partition; it is a matter of division, and each heir can demand the payment of his share..... *ib.*

PARTNERSHIP.

1. Where the property of a partnership firm is not more than sufficient to pay the partnership debts, no part of it can be legally applied to the payment of *the separate debts* of either of the partners.

Hagan et al. vs. *Scott*, 345

2. Where a partner buys the undivided share of his co-partner in a town lot, by assuming debts of his vendor to the full amount of its value, and paying them to his separate individual creditors, it will be a valid payment against the creditors of the partnership..... *ib.*

3. The separate creditors of a partner have a right to be paid out of his separate property, in preference to the claims of the creditors of the partnership, of which he is a member..... *ib.*

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4. A partner has no right to use or endorse the signature of the firm, when the endorsement is not made in a partnership transaction.

Leckie vs. *Scott et al.* 412

5. It is not clear that one partner can use the endorsement of the firm for a private transaction, even with the express consent of the other. Partners, perhaps, have no right to jeopardize the interests of their creditors, by using the name of the firm to secure gambling debts..... *ib.*

6. Where a commercial partnership purchases immovable property, as a house and lot, which is paid for out of the partnership funds, and the title taken in the name of the firm, the partners become joint owners, and either may sell his undivided share, which is also liable to seizure for his private debts.....*Baca* vs. *Ramos et al.* 417

7. The title is in the partner for his undivided share of real estate, which may be sold by him or his creditors, but when the property belongs to a commercial partnership, he must account to his co-partners for the price or value thereof..... *ib.*

8. So, where a partner sells his interest in the partnership to his co-partners, for a certain sum, he cannot afterwards demand a sale for a partition of certain real estate, held by the commercial firm of which he was a member, as the price or value belongs to the other partners..... *ib.*

9. Where a partner buys goods for another person, and pays for them on his own account, on receiving goods in return, with orders to sell them and place the proceeds to his credit, this partner may credit them in the separate account of such person.....*Wartelle* vs. *Le Blanc*, 556

PAYMENT.

1. Where the creditor receives funds of his debtor, he has a right to apply them to the debts that are due and payable, in preference to others more onerous, but which are not due.....*Cox* vs. *Reeves et al.* 232

2. So, a mortgage debt, which the debtor had a greater interest in paying, but not being due, is not entitled to imputation or preference, over one less onerous, and already due and payable..... *ib.*

3. Without positive evidence of an agreement to the contrary, the court will not presume that a payment was to be imputed to a mortgage debt, *not* due at the time it was made, although it is the most onerous.

Pargoud vs. *Amberson's Administrator*, 352

4. Payments must be imputed to the most onerous debt. So, where A was creditor of B, by an open account and a note, payments made, after the note became due, should have been imputed to it, instead of the account.

Pargoud vs. *Griffing's Administrator*, 356

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5. Payment made to the attorney, on the record, is a good payment. *Mourain* vs. *Beauvais*. 477

6. When there is but one debt due, there can be imputation of payment only to that one.....*Wartelle* vs. *Le Blanc*, 556

PRACTICE.

1. Where the defendant assigned for error that the case was taken up and tried *ex parte*, without notice to him, and without it appearing to have been fixed for trial during term time: *Held*, that it is to be presumed the court proceeded according to law, and its rules of practice, until the contrary is shown.....*Allen* vs. *Peytavin*, 40

2. In an action of slander, the plea of the general issue, and a plea of justification, are inconsistent, and cannot stand together. But where the cause was tried on these pleas, and the judge, in his charge to the jury, excluded the first from their consideration, it is sufficient. *Skillman* vs. *Downs*, 103

3. Where the plaintiff was ordered by the court to produce his commercial books on the trial, in pursuance of an affidavit of the defendant, setting forth the facts he expected to prove by them, and the former sent them sealed up, with directions to the clerk not to allow them to be opened, the affidavit was permitted to be given in evidence to the jury..... ..... *ib.*

4. An assignment of errors cannot be made against the allegations in the petition, which might have been supported by legal evidence. The allegations must be taken as true, when there is no statement of facts, nor evidence produced of record.....*Cox* vs. *Bethany*, 152

5. A new trial should not be granted on an affidavit of newly discovered evidence, when the facts disclosed relate to matters which have not been pleaded..... *ib.*

6. The judgment of the inferior court is clearly erroneous when founded on an exception not pleaded in the case.....*Palmer* vs. *Yarborough*, 167

7. In a petitory action, the pendency of another suit or judgment in a possessory action between the same parties about the same property, cannot be pleaded as an exception..... ..... *ib.*

8. The plea to the jurisdiction is waived, by pleading any other subsequent plea.....*Knight* vs. *Callender & Deblois*, 226

9. Judgment against a garnishee cannot be reviewed in the Supreme Court, when he is not made a party to the appeal..... *ib.*

10. Where the plaintiff sets up, in his answer, to be the true owner of the plaintiff's title to the land in controversy, and alleges long possession

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under it, he cannot, afterwards be permitted to dispute the *locus in quo*. He admits that the claim of the plaintiff covers the land in dispute.

Reeves vs. *Towles*, 276

11. An opposition, and not a separate suit is the proper mode of proceeding in litigating the claim of a creditor who demands to be placed on the tableau filed by the administrator of an estate. The plea of the general issue on the part of the administrator, will let in all legal evidence, touching the validity of the claim. .....*Pargoud* vs. *Griffing's Administrator*, 356

12. Whenever a change or correction is made in a judgment of the Supreme Court, not already final, it does not become so, until the lapse of three judicial days, within which a petition for a re-hearing may be presented, and no mandate is to issue.....*Chew et al.* vs. *Flint*, 372

13. Where it is suggested, and offered to be proved, before the trial closed, that one of the plaintiffs was dead, and that the cause be continued for the representatives of the deceased plaintiff to be made parties, judgment will be reversed, and the case remanded for this purpose.

Babcock, Gardiner & Co. vs. *Wells et al.* 397

14. The courts of Louisiana, acting on the principles of equity, will enforce the rights of the equitable owner to immovable property or rights, by compelling the legal one to make a conveyance.....*Baca* vs. *Ramos et al.* 417

15. Where the plaintiff has been improperly deprived of a witness to support the allegations in his petition, and to rebut the testimony of the defendant, the cause will be remanded.....*Tyson et al.* vs. *Lansing*, 444

16. When a cause is remanded for new proceedings, the plaintiff cannot have the note sued on protested, to show evidence of a demand which did not previously exist, and amend his petition, so as to avail himself of this circumstance..... .....*Bell* vs. *Williams' Administrator*, 514

17. No cause of action, accruing after the inception of the suit, can be set out in an amendment of the pleadings..... *ib.*

18. The signatures of deceased persons to receipts, offered to charge their estates, must be strictly proved by experts, and according to the principles established in the case of Plicque & Le Beau *vs.* La Branche, 9 Louisiana Reports, 559.....*Bissell et ux.* vs. *Erwin's Heirs*, 524

19. Where the clerk attests that the transcript contains all the testimony adduced on the trial, and the appellant relies on a bill of exceptions in the record, there is no assignment of errors necessary.

Charles Janin vs. *His Creditors*, *ib.*

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20. The Supreme Court will not remand a case, and order a supplementary account to be filed, which was not asked for by the pleadings in the court below. Such an order could only be made by an amendment.
Wartelle vs. *Le Blanc*, 556

21. Where the testimony has been taken down in writing, and the record contains all the evidence, the judge must so certify, and no other statement of facts is required.....*Hennen* vs. *Hennen*, 560

22. So, where either party requires the clerk to take down the testimony in writing, which shall serve as a statement of facts, the judge cannot be required to make one..... *ib.*

PRESCRIPTION.

1. An action for services done as a laborer or servant for wages, must be brought within a year, after the service is rendered. Continuity of services does not prevent prescription from running.
Ditch vs. *Wilkinson's Curator*, 201

2. A verbal acknowledgment by a person, that he intended to give the plaintiff a certain sum as a compensation for her services, will not repel the plea of prescription..... *ib.*

3. The action of mechanics, as builders, bricklayers, carpenters, &c., who undertake work by the job, and who do certain pieces of work at different times, is not prescribed by the lapse of one year.....*Harris et al.* vs. *Knox*, 229

4. The prescription, provided in the article 3499, of the Louisiana Code, does not apply to actions of mechanics, who do work by the job..... *ib.*

5. The prescription of one year, as provided in the article 3499, of the Louisiana Code, is not applicable to claims, for work done by the job.
Sargeant's Heirs vs. *Knox*, 231

6. Where the vendor assumes to sell without title, or a disclosure of the defects of his title, the vendee though holding under a sale *à non domino*, may invoke the prescription of ten years.....*Reeves* vs. *Towles*, 276

7. But where A sells to B all his right, title and interest, in and to a certain tract of land, which is vested in him by virtue of a sale for taxes, made by a parish judge, being for the taxes due thereon by C, the original owner: *Held*, that A is expressly exempted from warranty, except against himself; and his title thus sold being expressly referred to and set out, shows on its face the kind of claim, title or interest conveyed, and brings home to his vendee full knowledge of the title, under which his vendor claimed, which, if defective, prevents the prescription of ten years from running..... *ib.*

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8. A title on the face of which a fatal defect is stamped, and which is known to the possessor, cannot be the basis of the ten years' prescription. *ib.*

9. A title to serve as the basis of ten years' prescription must be in itself translative of property; but the title which does not furnish evidence that all the formalities required by law have been complied with, has always been considered deficient in form, whenever the vendor acts in a public capacity or trust, and takes upon himself to sell the property of another..... *ib.*

10. It is true with regard to the rightful owner, that the occupant who claims by prescription, must establish his limits by positive evidence, and show his possession inch by inch.....*Mayfield* vs. *Morris*, 441

11. The vendors of a house cannot invoke prescription, against an action which demands of them a diminution in price, on account of the defectiveness of the wall, when the vice was known to them, and disclosed, but which they failed to disclose to their vendee.....*De Armas* vs. *Gray et al.* 577

12. A loose acknowledgment to a third person by the maker of a note, that he was indebted to the holder, but not made in his presence, is insufficient to interrupt prescription, or take the case out of it, when it has been completed.....*Conway* vs. *Williams' Administrator*, 568

13. The acknowledgment, in order to interrupt prescription, must be specific. An acknowledgment of the debt..... *ib.*

PRINCIPAL AND AGENT.

1. The party sought to be charged, may show that he acted as agent, in drawing the bill of exchange sued on, and in this respect is to be considered in the same light as showing a want of consideration, and in either case he is not liable.. .....*Wolfe et al.* vs. *Jewett*, 383

2. A person may draw as agent upon his principal, for a debt not personal to himself, but due by the principal to the payees of the bill, without expressing the agency on the face of the bill..... *ib.*

3. Where the principal instructs his agent and attorney at law, entrusted with the enforcement of an execution against certain property, to let the sale take place without any interference on his (principal's) part, and the attorney bids it in on his own account for a sum less than the debt, he is not liable for any loss sustained by the principal, or for a violation of his trust.....*Relf, Syndic, &c.* vs. *Ives*, 509

PRINCIPAL AND SURETY.

1. Sureties *in solido*, in a bond given to release property of the debtor, attached at the suit of his creditors, are bound to pay such judgment as may

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be rendered in favor of the plaintiffs in attachment. It is no defence to an action in the bond against the sureties, that they pointed out property in which the common debtor had *an interest*, and that the plaintiffs neglected to seize it in satisfaction of their judgment.

Hill & M'Gunnegle vs. *Merle et al.* 108

2. The written acknowledgment of the principal obligor, in an agreement that the adverse party has complied with his contract, is binding on the surety.....*Reynes* vs. *Zacharie's Succession.* 127

3. Where the principal and his sureties are jointly and severally bound, either of them may be sued alone.....*Ballew* vs. *Andrus' Executor.* 216

4. If the party bound himself, his heirs and executors, the latter may be sued on the bond alone..... *ib.*

5. Obligations arising from a sheriff's bond as relates to the sureties, are obligations *ex contractu* and not *ex delicto*, even when the bond is given to cover damages resulting from torts, or omissions of duty of the principal therein..... *ib.*

6. The surety in a mortgage for specified sums, consisting of a principal debt, and the interest accruing on it, is not liable for a private account owing the same person by the principal debtor.....*Cox* vs. *Rees et al.* 232

7. Where certain property is conveyed to a surety by a principal debtor to indemnify him against loss resulting from his suretyship, its value at the time of conveyance must be taken into consideration, when it is offered in compensation and reconvention against the sums the surety has actually had to pay for his principal.....*Montgomery* vs. *Russell*, 330

8. Where the surety is sued on a bond given for an illicit or illegal consideration before a competent tribunal and makes all the defence in his power to avoid the obligation, and fails, and afterwards to avert seizure or arrest, releases errors and pays the judgment obtained against him, his principal will be bound to reimburse him..... *ib.*

9. Where a person, not a party to a bill or note, endorses his name on the back of it, he is presumed to have done so as surety, and not as endorser.

Smith vs. *Gorton.* 374

10. The surety may avail himself of all the pleas to which the principal is entitled, except such as are personal to the latter, as non-age, coverture and the like. He may plead the want of consideration or an illegal one, as a gaming consideration.....*Leckie* vs. *Scott et al.* 412

PRIVILEGE.

1. The vendor of a vessel, or other immovable not paid for, is entitled to a privilege on its proceeds when sold by a forced sale, in a suit against the

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vendor for the *price*, even when he has taken a note and allowed a credit; but his privilege is of inferior rank to that of a creditor who has furnished supplies to the vessel.....*Terry* vs. *Terry et al.* 68

PURCHASER.

1. A purchaser of stocks at auction, when there is no deception, takes them subject to all the requirements of the charter of the institution from which they emanate.....*Gordon* vs. *Parker* 56

2. Where a purchaser is sued to compel a compliance with the conditions of the sale, and avers he is not bound by it, evidence is admissible to show that he offered his note at long date in compliance, and as a recognition of his bid..... *ib.*

3. A purchaser of a judgment against himself at a sacrifice, or for a sum below its nominal amount by misrepresenting it as of no value to the appraisers, even when such purchase is made through the invention of an agent, will not be suffered to derive any advantage from it.....*Eastin* vs. *Dugat*, 186

4. So, a purchaser should not profit by his own wrong, or derive any advantage from a sacrifice which he sought to inflict on his adversary..... *ib.*

RECONVENTION.

1. Where the debt claimed by the plaintiff, and the damages sought for in the answer of the defendant, arise from one and the same transaction, the latter claim is a fair and legal demand, which may be pleaded in reconvention.....*Wilcoxon* vs. *Buford's Heirs*, 183

2. So, where the demands are different, but have the same origin, and are intimately connected, being the consequence of the same transaction, the defendant may reconvene the plaintiff for damages in his answer in the same suit..... *ib.*

RECORDS.

1. The same exactness is not to be expected, and will not be required in the execution and preservation of the records of marriages, births and deaths in a new colony, as is observed and required in the mother country. *Clappier et al.* vs. *Banks*, 60

2. The destruction by fire of the places of deposit of records and documents, dispenses with the production of the originals, which may be fairly supposed to have been destroyed..... *ib.*

REDHIBITION.

1. In a redhibitory action where the evidence failed to satisfy the jury that the disease of which the slave died, made its appearance within three

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days after the sale, the plaintiff cannot avail himself of the legal presumption in such cases.....*Banks* vs. *Botts*, 42

2. When the presumption of a redhibitory disease ceases, the buyer may still prove the fact that the disease existed at the time, or within three days after the sale..... *ib.*

SALE.

1. The assessment is the authority on which the sheriff or collector proceeds to demand and sell property for taxes; it is analogous to an execution issuing on a judgment. To support a sheriff's deed, the party relying on it must show a judgment and execution. So, a deed for land, purchased at a sale for taxes, unaccompanied by evidence of assessment, is insufficient to show a valid alienation, and that the former owner is divested of title.....*Reeves* vs. *Towles*, 276

2. Where the vendor assumes to sell without title, or a disclosure of the defects of his title, the vendee, though holding under a sale *à non domino*, may invoke the prescription of ten years..... *ib.*

3. Errors of law do not form a good foundation for acquiring property... *ib.*

4. The deed of a tax collector, though it proves *rem ipsam*, i. e. that he sold, yet it furnishes no evidence of his authority to sell without proof of an assessment, and is, therefore, defective in form..... *ib.*

5. The sale and purchase by the surviving widow of the community and separate property of the deceased husband, is illegal and null, when there was no under tutor present at the family meeting, which advised the sale.....*Stafford et ux.* vs. *Villain et al.* 319

6. The sale of a tract of land by an act under private signature, which does not even appear to be recorded, will be good between the parties, when it is shown that the vendee has been in possession under this title for nearly twenty years. Between the parties and their heirs, such an act forms full proof.....*Wells' Heirs* vs. *Lamothe*, 410

7. Where the purchaser, subsequently to the sale, executes a private instrument or memorandum, in which he declares, "he has this day rented from J. E. (his vendor) his plantation, whereon I now live, together with the negroes, &c., and I engage to pay the taxes, &c., and a certain sum, clear and free of all expense, &c., and that J. E. have a privilege on all the crops:" *Held*, that this was only a harmless simulation, which did not rescind the sale.....*Bissell et ux.* vs. *Erwin's Heirs*, 524

8. So, where a purchaser or creditor is evicted by a prior mortgage, which existed on the premises when he bought, and the eviction was

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had before the expiration of the term of payment, the seller will be liable in warranty, as the vendee is not in delay as regards payment..... *ib.*

SEQUESTRATION.

1. A sequestration of the funds of the defendant, in the marshal's hands does not have the effect of an attachment, to bring the party into court by his property. If the defendant is absent in such case, and there is no curator *ad litem* or *ad hoc* appointed to represent him, but only service of citation on the attorney appointed to defend the suit, it will be dismissed as to him.
Terry vs. *Terry et al.* 68

SLAVES.

1. Where the owner of slaves, permits them to tow vessels or work for themselves, and at times forbids them, if one is accidentally lost, whilst engaged in such employment, the person so employing them will not be liable to the owner for the value of the slave so lost.....*Rice* vs. *Cade et al.* 288

2. So, where slaves came on board a steamboat while she was wooding, and one of them was accidentally killed by the fly-wheel, and it is not shown they were actually employed, the owners of the boat will not be liable for the slave thus lost..... ..... *ib.*

SUIT.

1. There are three parties to a suit, which are necessary at its inception and progress to final judgment, viz: *judex*, *actor et reus.*

2. Even when there are more plaintiffs than one, the others not having authority to represent this one, if he dies during the progress of the cause, no valid judgment can be pronounced until his heirs and representatives be made a party to represent him..... *ib.*

3. In suits for a cause of action relative to the wife's separate interests, both husband and wife must be made parties..*Wells et ux.* vs. *Scott's Executor*, 399

SURETY.—SEE PRINCIPAL AND SURETY.

TITLE.

1. The principle that, when the titles of the parties respectively are of equal dignity, the possessor will be maintained in accordance with the maxim *potior est conditio possèdentis*, is confined to cases where both titles cover the *locus in quo*.....*Wall* vs. *Spurlock*, 339

TUTOR.

1. To effect the removal from office of a tutor, or under tutor, for the causes authorized by law, suit must be instituted for that purpose by a curator *ad hoc*, appointed by the judge of probates....*Bird's Heirs* vs. *Black*, 82

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2. The tutor is entiled to ten per cent. commission on the amount of the revenues of his pupil, arising from five per cent. interest on the pupil's funds in his hands, and from the hire of his slaves and other sources of revenue. The commission must be calculated on the *amount* of the revenue, and the interest of five per cent. is to be calculated on the remaining sum, after deducting the commission and expenses of education. *Turnbull, Tutor, &c.* vs. *Towles' Executor*, 254

3. The nullity resulting from the want of an account rendered previous to the release or extra-judicial settlement between the tutor and minor, is relative, and must have its effect until annulled by direct action; at least so far as third persons are concerned.....*Collins* vs. *Collins' Administrator*, 264

4. The minor is restricted in his direct action of nullity against his tutor, to set aside a settlement and for restitution, to four years after his arrival at the age of majority..... *ib.*

5. Where a family meeting consent to mortgage the property of minors, to obtain a loan to enable the tutor to discharge a judgment against them, and the loan not being procured, the tutor pays the amount of the judgment with other funds of the minors in his hands, it will be valid. *Delahoussaye's Heirs* vs. *Bienvenu*, 272

6. The tutor has a right to dispose of the funds in his hands on his responsibility; and where he pays a judgment obtained against his pupils, the judgment cannot be rescinded, and the amount recovered back from the owner who received payment. If the tutor paid without authority, the minors must look to him, as in case of mal-administration of their estate..... *ib.*

7. The wife is deprived of her tutorship *ipso facto*, if she marries again without having provoked a family meeting. This is an affirmative pregnant with the negative, that her marriage, after provoking a family meeting, does not deprive her of her tutorship, even if the proceedings are not homologated.....*Rachal et al.* vs. *Rachal's Heirs*, 454

8. Where the tutrix has caused an inventory to be made of her deceased husband's estate, it is unnecessary to renew the inventory on the death of a child, as the evidence of the extent of his property is already of record. *Rachal* vs. *Rachal et al.* 460

9. The wife will be maintained in her tutorship, when she has been retained in it by advice of a family meeting, on a second marriage..... *ib.*

10. Where the insolvency of the husband, who is co-tutor with his wife, is made the ground of suspension of the functions of the latter as natural tutrix, it must be sought for in a direct action..... *ib.*

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11. When the father and mother are dead, the grandfather is entitled of right and by law, to the tutorship of the minor children. No supposed aversion of the minors towards him can deprive him of it, that it may be given to a brother of the deceased.....*Wood* vs. *Brown*, 540

12. There is no obligation on the party to cause an inventory to be made of the property of the minors, *until* he is appointed and qualified as tutor, *ib.*

13. Where there is no tutor appointed by will, the judge of probates is bound to give it to the nearest ascendant relation of the minor, and no family meeting is required..... *ib.*

USUFRUCT.

1. The father and mother have, during marriage, the enjoyment of the estate of their children until majority or emancipation; and the usufruct which the father has on the estates of his children, is only *during* marriage, and is a legal usufruct.....*Handy, under Tutor, &c.* vs. *Parkison et al.* 92

2. According to the laws of Spain, the father is entitled, during minority, to the usufruct of the adventitious property of his children, and is bound to account for the rents and revenues. He can never be the tutor of his own child, as it is only on his death tutorship begins. He may by testament appoint a tutor, even to the exclusion of the mother..... *ib.*

3. According to the Louisiana Code, the surviving husband cannot be a usufructuary of the estate of his children. Tutorship commences on the dissolution of the marriage, by the death of either party, and the survivor is entitled to the tutorship, as natural tutor. The obligations of tutor, in relation to the property of the children, are prescribed by law..... *ib.*

4. Where a testator bequeathed the usufruct of all his property to his brother and wife, "*during their lives*," and after both their deaths, "the property to return to those that may be legally entitled to the same:" *Held*, that no part of the usufruct ceases, until the death of both the usufructuaries.....*Arceneaux* vs. *Bernard*, 246

VERDICT OF THE JURY.

1. Where the error is in the amount of the sum found by the verdict, and depends on calculation, the Supreme Court will correct it without setting the verdict aside.

Hanse & Hepp vs. *New-Orleans Marine and Fire Insurance Co.* 1

2. Where the matter in contest is left doubtful by the evidence, and the question is one of fact, the verdict of the jury will not be disturbed.

Banks vs. *Botts*, 42

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3. The jury are made the judges of the law and facts of the case when it is submitted for their verdict. They may, indeed, act on a qestion of fact, and by a special verdict submit that of the law to the court; but they are at liberty in all cases to act on both questions.

Bostwick vs. *Gasquet et al.* 80

4. Where the sum found by the jury is erroneous, and the error is rather one of law than of fact, which the record enables the court to correct, the case will not be remanded, but final judgment rendered.

Segond vs. *Thomas*, 295

5. The court will correct an error in the finding of the jury, as to the amount or sum found, when it can do so, and not remand the case.

Tippet vs. *Jett*, 359

6. Where the testimony is contradictory, on mere questions of fact, the verdict of the jury, when it is not apparently erroneous, will not be disturbed.....*Many* vs. *Parmly*, 591

WARRANTY.

1. The obligations of the warrantor depend on the law in force at the time of the sale. According to the provisions of the *Civil Code* 354, art. 57, the seller is bound, on the eviction of his vendee, to pay the augmented value of the property above the price of the sale.

Fletcher's Heirs, vs. *Cavalier et al.* 116

2. The original price, added to the rents and profits, does not necessarily constitute the measure by which the liability of the warrantor is to be tested, *ib.*

3. The warrantor is not to be called on to reimburse, until the judgment of eviction has had its effect..... *ib.*

WALL.

1. Where there is a defect in the wall in a house, which is not declared, and not apparent, the vendee *will* be entitled to a diminution of price proportionate to the injury sustained, if soon after the sale the wall falls in ruins.

De Armas vs. *Gray et al.* 575

2. The vendors cannot invoke prescription against an action which demands of them a diminution in price on account of the defectiveness of the wall, when the vice was known to them, but which they failed to disclose to the vendee.....*ib.*

3. The correct standard by which to ascertain the diminution of price is the costs of repair..... *ib.*

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WILL.

1. Where a will is in the mystic form and it does not state in the superscription on the envelope, that the paper containing the will was either closed, sealed or presented by the testatrix to the notary, it will be considered as defective and null, as not possessing the formalities required by law.....*Stafford et ux.* vs. *Villain et al.* 319

2. All the formalities required by law in making wills must be complied with, on pain of nullity.....*ib.*

3. Where a will has been proved in the Court of Probates but not ordered to be executed, it will not have any effect.....*Stewart's Curator* vs. *Row*, 530

4. A testament is without effect until it has been fully proved, and its execution ordered..... *ib.*

5. If the testator has failed to name an executor, the judge must, *ex officio*, appoint a *dative* testamentary executor, and the will ordered to be executed, *ib.*

WITNESS.

1. According to the divorce law of 1827, ascendants of one of the spouses are competent witnesses to prove cruel and unjustifiable treatment on the part of either spouse, towards the other, in an action for separation from bed and board; but their competency does not extend to proof of the property, which the wife may claim as her own.....*Taylor* vs. *Phelps*, 114

2. A witness on oath will not be permitted to contradict his written acknowledgments and admissions, even when not sworn to.
Reynes vs. *Zacharie's Succession*, 127

3. A witness who is a judicial and general mortgage creditor of the plaintiff, by recording a judgment against him, and which would attach to the land sued for, in case of recovery, and form the means of satisfying his claim, is, nevertheless, not *incompetent* to testify, on the part of the plaintiff, on the score of interest.....*Russell* vs. *Sprigg*, 421